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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,282	03/25/2004	David P. Fierek	1191.1101101	2176

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EXAMINER

POLLICOFF, STEVEN B

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/811,282	<b>Applicant(s)</b> FIEREK, DAVID P.	
	<b>Examiner</b> Steven B. Pollicoff	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date: _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/20/04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4,6,8,15-18,21,27 and are rejected under 35 U.S.C. 102(b) as being anticipated by Fogelberg (US Pat 5,186,329).

With respect to claims 1,2 and 16, Fogelberg discloses a bucket tool organizer comprising a tool insert (Fogelberg Fig 1, reference number 10) situated within the interior of a container (ref. no. 12) having an upper end, an opening near the upper end, a closed lower end, and a side wall (see Fig 1 generally), said tool insert including a contoured holster (note the various pockets of the tool insert, ref. nos. 32,44 and 46) having a shape configured to tightly receive an object therein (see Fig 3 generally), the shape being bounded by first and second side panels (Fig 1 ref no 18), first and second end panels (Fig 1 ref nos 40 and 62), and a bottom panel (Fig 1 ref no 28) and fastening means for releasably securing the tool insert to the upper end of the container (Fig 1 where upper margin ref no 26 fits the top of the container at the container rim 78; see also column 2, lines 1-3).

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With respect to claims 3 and 17, Fogelberg inherently teaches that the tool insert is situated at or near the centroid of the container (ie situated in the middle of the container).

With respect to claims 4 and 18, Fogelberg discloses that the bottom panel of said tool insert includes a necked-down region (Fig 2 as sidewall ref no 16 narrows towards bottom panel ref no 18).

With respect to claim 6, Fogelberg discloses that the tool insert is removably situated within the interior of the container (Fig 1 generally).

With respect to claims 8 and 21, Fogelberg discloses that the tool insert includes one or more pockets attached to one or both of said first and second side panels (Fig 1 see plurality of pockets next to side panels ref no 18).

With respect to claims 15 and 27, while Fogelberg does not expressly disclose that the tool organizer holds a power tool, it does disclose that it holds tools and therefore, inherently capable of holding power tools.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 5 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogelberg (US Pat 5,186,329) as applied to claims 1 and 16 above and further in view of McAfee (US Pat 5,271,520).

With respect to claims 5 and 19, Fogelberg does not disclose that the tool insert further comprises an eyelet disposed through the bottom panel. However, McAfee discloses eyelets (Fig 1 ref no 62) in a bottom panel (ref no 50) of a tool insert (the combination of ref no 34 and 50 connected by ref no 52). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tool insert of Fogelberg to include an eyelet in the bottom panel, as taught by McAfee, for the purpose of supporting portions of smaller containers in the insert.

Claims 7,10-14,20,23-26,28-30,32,33-35 and 37-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogelberg (US Pat 5,186,329) as applied to claims 1 and 16 above and further in view of Lindsay (US Pat 4,993,551).

With respect to claims 7,10,20,23 and 34 Fogelberg does not disclose that the holster is formed from a fabric or cloth material nor does the reference disclose a bucket mounted tool carrier adapted to contour about the container. However, Lindsay

discloses a holster (Lindsay Fig 1 ref no 10) formed from a fabric. Lindsay's holster may also function as a bucket mounted tool carrier to drape over an outer container (Fig 1 generally). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container and tool insert of Fogelberg to include a bucket mounted tool carrier for the container and a fabric holster for the insert,

With respect to claims 11-13,24-26,37 and 38, Fogelberg does not disclose that the bucket mounted tool carrier includes a cylindrically shaped interior panel member that includes a pleated section configured to drape over said open end and extend into the interior of the container. However, Lindsay discloses a cylindrically shaped interior panel member (Fig 1 ref no 22) that includes a pleated section (ref no 26) configured to drape over said open end and extend into the interior of the container and an exterior panel member (ref no 24) that includes a slotted section (ref no 35) configured to drape over the exterior of the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Fogelberg to include a bucket mounted tool carrier with all of the limitations disclosed above, as taught by Lindsay, for the purpose of allowing a user to carry a wide variety of tools that are readily available in an organized fashion (column 1, lines 9-13) while utilizing a standard, relatively inexpensive five gallon bucket.

With respect to claim 14, since Lindsay discloses that the bucket mounted tool carrier is draped over the container (Lindsay Fig 1) and Fogelberg discloses that the tool insert is fixedly secured to the bucket (Fogelberg Fig 3) then it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the

Fogelberg bucket organizer so that the tool insert would be fixedly secured to the bucket mounted tool carrier for the purpose of maximizing the amount of tools and storage space available to a user using the bucket tool organizer.

With respect to claims 28-30,32,33,35,40 and 41 while Fogelberg teaches the tool insert described above in claims 1-4,6,8 and 14, the reference does not teach a bucket mounted tool carrier. However, Lindsay discloses a bucket mounted tool carrier adapted to contour about a container having an upper end, an opening near the upper end, a closed lower end, and a side wall, said bucket mounted tool carrier including a cylindrically shaped interior panel member configured to drape over said open end and extend into the interior of the container, and an exterior panel member configured to drape over the exterior of the container (Fig 1 generally). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Fogelberg to include a bucket mounted tool carrier with all of the limitations disclosed above, as taught by Lindsay, for the purpose of allowing a user to carry a wide variety of tools that are readily available in an organized fashion (column 1, lines 9-13) while utilizing a standard, relatively inexpensive five gallon bucket.

With respect to claim 39, while Fogelberg does not expressly disclose that the tool organizer holds a power tool, it does disclose that it holds tools and therefore, inherently capable of holding power tools.

Claims 9 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogelberg (US Pat 5,186,329) as applied to claims 1 and 16 above and further in view of Dillon (US Pat 5,678,509).

With respect to claims 9 and 22, Fogelberg does not disclose that the fastening means comprises a set of clips attached to the tool insert or that the set of clips is adapted to releasably secure the tool insert to the upper end of the container. However, Dillon discloses a container system having a container (Dillon Fig 1 ref no 14) and an insert (ref no 52) having a set of clips (ref no 94) to releasably secure the insert to the upper end of the container (see where clips ref no 94 mate with apertures ref no 92). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tool insert of Fogelberg to include a set of clips, as taught by Dillon, for the purpose of securing the tool insert to the container.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fogelberg (US Pat 5,186,329) and Lindsay (US Pat 4,993,551) as applied to claim 28 above and further in view of McAfee (US Pat 5,271,520).

With respect to claim 31, Fogelberg as modified above does not disclose that the tool insert further comprises an eyelet disposed through the bottom panel. However, McAfee discloses eyelets (Fig 1 ref no 62) in a bottom panel (ref no 50) of a tool insert (the combination of ref no 34 and 50 connected by ref no 52). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tool insert of Fogelberg as modified above to include an eyelet in the bottom panel, as taught by McAfee, for the purpose of supporting portions of smaller containers in the insert.



Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fogelberg (US Pat 5,186,329) and Lindsay (US Pat 4,993,551) as applied to claim 28 above and further in view of Dillon (US Pat 5,678,509).

With respect to claim 36, Fogelberg as modified above does not disclose that the fastening means comprises a set of clips attached to the tool insert or that the set of clips is adapted to releasably secure the tool insert to the upper end of the container. However, Dillon discloses a container system having a container (Dillon Fig 1 ref no 14) and an insert (ref no 52) having a set of clips (ref no 94) to releasably secure the insert to the upper end of the container (see where clips ref no 94 mate with apertures ref no 92). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tool insert of Fogelberg as modified above to include a set of clips, as taught by Dillon, for the purpose of securing the tool insert to the container.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stein (US Pat 6,059,109) discloses a storage tray insert with engaging clips disposed atop a bucket. Fischer et al., (US Pat 5,207,348) discloses a paint bucket with a tool insert having clips.

### ***Conclusion***

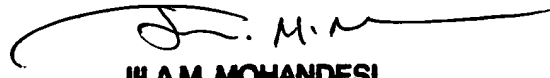
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*SBP*  
SBP 4/12/06

  
**JILA M. MOHANDESI**  
**PRIMARY EXAMINER**